

IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re: ) Chapter 7  
BEVERLY JANE CARY, ) Bankruptcy No. 20-12450  
Debtor(s). ) TRUSTEE’S RESPONSE TO DEBTOR’S  
MOTION TO CONVERT CASE UNDER  
CHAPTER 7 TO CASE UNDER  
CHAPTER 13

COMES NOW the duly appointed trustee, Ronald G. Brown, through counsel, The Livesey Law Firm, and Rory C. Livesey, and files this response to the Debtor’s Motion to Convert Case Under Chapter 7 to Case Under Chapter 13.

The trustee does not oppose the debtor’s conversion to a Chapter 13. However, the debtor received a Chapter 7 discharge on December 23, 2020. While the debtor’s motion to convert states that the debtor agrees that none of the creditor claims should be barred in the Chapter 13, the proper approach should be to vacate the discharge pursuant to Fed. R. Civ. P. 60, made applicable to these proceedings pursuant to Fed. R. Bank. P. 9024. *See, In re Lenox*, 902 F.2d 737, 740 (9<sup>th</sup> Cir. 1990). (As courts of equity, the Bankruptcy Court has the power to reconsider, modify or vacate their previous orders so long as no intervening rights have become vested in reliance on the order.) A court using Rule 60 to vacate an order restores the parties to the position they were in before the court issued the vacated order. *In re Cisneros*, 994 F.2d 1462, 1466 (9<sup>th</sup> Cir. 1993). Although the trustee does not doubt the debtor’s intention in stating that the creditors should not be barred from filing claims, vacating the discharge removes any ambiguity.

1           WHEREFORE, the trustee prays for an order accordingly.

2           RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of April, 2021.

3                           THE LIVESEY LAW FIRM

4   */S/ Rory C. Livesey*

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6   Rory C. Livesey, WSBA #17601  
7   Attorney for Ronald G. Brown, Trustee